

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

HATIM NAJI FARIZ, and,
GHASSAN ZAYED BALLUT

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CASE NO.: 8:03-CR-77-T-30-TBM

**RESPONSE BY THE UNITED STATES
TO MOTION FOR GRAND JURY TRANSCRIPTS
BY DEFENDANT HATIM NAJI FARIZ
AND DEFENDANT GHASSAN ZAYED BALLUT**

The United States hereby responds in opposition to Defendant Hatim Naji Fariz' Motion for Grand Jury Transcripts which was adopted by Ghassan Zayed Ballut, and in support thereof states the following:

BACKGROUND

In February 2003, a grand jury charged Fariz and others with numerous crimes related to their alleged involvement with the Palestinian Islamic Jihad ("PIJ"), including conspiracy to commit racketeering and violating the Travel Act by engaging in interstate conversations intended to promote extortion and money laundering. Doc. 1. The grand jury charged in overt acts 236 and 253 supporting the conspiracy and Travel Act counts that Fariz had engaged in telephone conversations with Abd Al Aziz Awda, id. at 78, 83-84, whom the grand jury identified as the "founder and spiritual leader of the PIJ and a member of the governing Shura Council of the PIJ," id. at 12, and who, the grand jury charged, was a Specially Designated Terrorist pursuant to Executive Order 12947, id.

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The grand jury also charged in overt acts 240 and 247 that Fariz had engaged in telephone conversations with another conspirator during which Fariz and the co-conspirator discussed Awda. Id. at 79-80, 82.

At 12:30 p.m. on April 7, 2003, the United States received exculpatory information suggesting that the speaker in the conversation listed in overt act 253 was not Awda but another PIJ member. See Doc. 71 at 1. Because of the information's potential impact on Fariz's detention status, the United States immediately brought this information to the attention of both the Court and defense counsel via a "Supplement to the Record," filed at 2:25 p.m. on April 7. Doc. 71. The Supplement stated that in light of the exculpatory information concerning the identity of the speaker in overt act 253, the United States believed that "references to Abd Al Aziz Awda in Overt Acts 236, 240 and 247 in Count I are suspect." Id. at 1. The United States also withdrew its previous proffer, given for purposes of Fariz's detention hearing, that Fariz had been in direct contact with Awda. Id. at 2.

At a status conference on April 8, the court expressed concern that a potential misidentification in overt acts 253 could indeed affect Fariz's detention status. (Attachment A, at 23-24). The United States was unable to supply more information concerning the source of the misidentification, but reiterated that the United States now believed that the speaker was not Awda but another PIJ member, and that the mistake that had resulted in the misidentification of Awda might possibly affect overt acts 236, 240, and 247. Id. at 10-11.

Fariz has received copies of taped conversations supporting overt acts 236, 240, 247, and 253 on in discovery

Based on the exculpatory information concerning overt act 253, Fariz has filed a motion under Fed. R. Crim. P. 6(e)(3)(E)(ii)¹ seeking disclosure of grand jury transcripts to prepare a “motion to dismiss the Indictment for lack of probable cause.” Doc. 254 at 1. He opines that because “the government has admitted that certain overt acts in which Mr. Fariz allegedly spoke to Mr. Awda are factually inaccurate as alleged,” the “factual accuracy of the entire Indictment, and in turn the probable cause required for an indictment, is in question.” *Id.* at 1. Fariz has not limited his request to any particular portion of the transcripts. He asserts, however, that his request is nevertheless “narrowly tailored” because he seeks only that information in the transcripts that pertains to “counts and paragraphs of the Indictment in which he is allegedly implicated in criminal activity, either directly or [through] an alleged conspiracy with co-defendants and others unnamed.” *Id.* at 8. He invites the Court to review the transcripts *in camera* and provide him with all portions “which pertain to, or are related to, [his] case.” *Id.* at 8.

SUMMARY OF THE ARGUMENT

This Court should deny Fariz’s motion to disclose the grand jury transcripts. Fariz assertedly seeks disclosure of the transcripts to support a motion to dismiss the indictment for lack of probable cause based on his speculation that information before

¹Rule 6(e)(3)(E)(ii) allows the district court to authorize disclosure of “grand-jury matter” despite the rule of absolute grand jury secrecy, *see* Fed. R. Crim. P. 6(e)(2)(B), “at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury.” Fed. R. Crim. P. 6(e)(3)(E)(ii).

the grand jury might be faulty. Absent evidence of an abuse of the grand jury process, however, he cannot challenge the indictment based on the sufficiency or quality of the evidence. Moreover, Fariz is already in possession of the very information, the taped conversations, which he claims might be incorrect. Fariz's request for disclosure, therefore presents no legitimate need for the transcripts and appears to be a mere "fishing expedition" to better prepare him for trial. Such a request cannot overcome the need for grand jury secrecy. In any event, Fariz's request for wholesale disclosure of all the grand jury transcripts is fatally overbroad.

ARGUMENT AND AUTHORITIES

Fariz must demonstrate a "compelling necessity" for the grand jury transcripts to overcome the "indispensable secrecy of grand jury proceedings" protected by Fed. R. Crim. P. 6(e). United States v. Procter & Gamble Co., 356 U.S. 677, 682 (1958). He argues that he has established a "particularized need" for the transcripts under the Supreme Court's standard in Douglas Oil Co. of California v. Petrol Stops Northwest, 441 U.S. 211 (1979), such that they may be disclosed. Doc. 254 at 2.² To establish a

²The Supreme Court in Douglas Oil was considering a motion to disclose under Fed. R. Crim. 6(e)(3)(C)(i) (now Fed. R. Crim. P. 6(e)(3)(E)(i)), which authorized the Court to disclose grand jury materials "preliminarily to or in connection with a judicial proceeding." Fariz filed his motion under Rule 6(e)(3)(E)(ii) (former 6(e)(3)(C)(i)), not Rule 6(e)(3)(C)(i). Regardless, the Supreme Court developed the particularized need standard to protect general policy concerns under Rule 6(e), see Procter & Gamble, 356 U.S. 677 (addressing a motion to disclose under the Federal Rules of Civil Procedure) and several courts of appeals have explicitly applied the standard to motions like Fariz's that seek disclosure not in connection with a judicial proceeding but because there may exist a reason to dismiss the indictment, see United States v. Broyles, 37 F.3d 1314, 1318 (8th Cir. 1994); United States v. Puglia, 8 F.3d 478, 480 (7th Cir. 1993); United States v. Warren, 747 F.2d 1339, 1347-48 (10th Cir. 1984). The Eleventh Circuit also has stated that "[p]articularized need is not shown by a general allegation that grand jury materials are necessary for the preparation for a motion to dismiss," United States v. Elliott, 849 F.2d 554, 557 (11th Cir. 1988), thus suggesting

“particularized need” sufficiently compelling to warrant disclosure, however, Fariz must establish (1) that he has a particular need for the material to avoid injustice and (2) that his need for the material outweighs the continued need for grand jury secrecy, and he must (3) tailor his request such that secrecy is lifted only “discretely and limitedly.” Douglas Oil, 441 U.S. at 222; Procter & Gamble, 356 U.S. at 682-83. He has not satisfied any of these criteria.

The main flaw in Fariz’s argument is that he admittedly seeks the transcripts only to support a motion to dismiss the indictment “for lack of probable cause.” Doc. 254 at 1. It is well-established, however, that a defendant cannot successfully challenge his indictment based on the sufficiency of the evidence before the grand jury, as such a challenge would deplete the Court’s resources by necessitating a preliminary trial. Costello v. United States, 350 U.S. 359, 363 (1956) (“If indictments were to be held open to challenge on the ground that there was inadequate or incompetent evidence before the grand jury, the resulting delay would be great indeed. . . . An indictment returned by a legally constituted and unbiased grand jury, . . . if valid on its face, is enough to call for trial of the charge on the merits.”); United States v. Cruz, 478 F.2d 408, 412 (5th Cir. 1973) (stating in the face of defendant’s argument that the grand jury had no probative evidence of guilt before it: “We will not review the sufficiency of the evidence, if any, supporting the grand jury indictments in this case”). Fariz’s proposed motion to dismiss is particularly inappropriate because he apparently wishes to

that the particularized need standard applies equally to Rule 6(e)(3)(E)(ii) motions. In any event, for the same reasons that Fariz cannot satisfy the particularized need standard, he also cannot show that a “ground may exist to dismiss the indictment because of a matter that occurred before the grand jury.” Thus, even if the particularized need standard he urges were not applicable, his motion still would fail.

challenge probable cause not based on any insufficiency of the evidence as it actually was presented to the grand jury, but by bringing after-acquired exculpatory information-- like the United States' information concerning the identification of Awda in overt act 253--to bear on the grand jury's evidence. There is no duty, however, to present even "substantial" exculpatory evidence to the grand jury in the first place, United States v. Williams, 504 U.S. 36, 39, 51-54 (1992). Thus, Fariz certainly cannot attack the jury's probable cause to indict by pointing to postindictment exculpatory evidence that the grand jury could not have considered. Cf. Williams (district court may not dismiss indictment for failure to present exculpatory evidence). Fariz's asserted need for the transcripts--to file a motion to dismiss for lack of probable cause--is, therefore, illusory.³

To the extent that Fariz suggests the grand jury proceedings should be thrown open because it is the United States that has learned postindictment of exculpatory information casting doubt on evidence before the grand jury, that suggestion is unsupported. As the Eleventh Circuit held in United States v. DiBernardo, 775 F.2d 1470 (11th Cir. 1985), a case in which the parties learned postindictment that a government agent may have given false testimony before the grand jury: "Assuming, for sake of argument, that the issue is still open, we reject the proposition appellees advance, that, absent a deliberate abuse of the grand jury process, a district court can dismiss a grand jury indictment in the exercise of its supervisory power." Id. at 1475.⁴

³Fariz has not requested this Court to conduct an in camera review of the transcripts to determine probable cause. For the reasons explained in text, such a request would be inappropriate.

⁴The Supreme Court's decision in United States v. Williams, 504 U.S. 36 (1992), casts doubt on caselaw allowing district courts to exercise their supervisory power to dismiss indictments based on the government's conduct in presenting evidence to the

There is, of course, no suggestion here of prosecutorial misconduct that might allow an attack on the indictment. To the contrary, the United States behaved ethically by immediately bringing to the attention of the Court and the defendants the exculpatory information that had a bearing on Fariz's detention status. It should not be "punished" for doing so with an otherwise unauthorized disclosure of grand jury materials. Indeed, abrogating grand jury secrecy based on such conduct would not encourage the full and frank disclosure of such information in the future.

Furthermore, even if postindictment information might call an indictment into question based on the sufficiency of the evidence before the grand jury, Fariz has provided no reason for the court to lift grand jury secrecy in this case. Fariz moves for disclosure based on the information concerning the misidentification of Awda in overt act 253 and the United States' resulting suspicions regarding other overt acts. Fariz, however, already has filed motions to dismiss those counts that he considers to be based on the information in overt act 253, as well as those counts that are based on the information that the United States considers "suspect," see Docs. 250 and 256; thus, he clearly does not need the transcripts to prepare his motion to dismiss those counts. Fariz asserts that "it is also possible -- if not likely -- that [the grand jury] is also mistaken as to: (1) Mr. Fariz's identity as a participant in [other] telephone calls, (2) the identities

grand jury. See LaFave, Israel, and King, Criminal Procedure, § 15.5(b), as updated by the 2003 pocket part. As the Williams Court stated: "It would make little sense . . . to abstain from reviewing the evidentiary support for the grand jury's judgment [as required in Costello, etc.] while scrutinizing the sufficiency of the prosecutor's presentation. A complaint about the quality or adequacy of the evidence can always be recast as a complaint that the prosecutor's presentation was 'incomplete' or 'misleading.'" Williams, 504 U.S. at 54. Regardless, as explained in text, there is no suggestion of misconduct here.

of other participants in [other] telephone calls, and (3) the identities of others mentioned by actual participants in [other] telephone calls.” Doc. 254 at 5. There is nothing to suggest, however, that the misidentification of Awda in overt act 253 could affect identifications of Awda other than those already identified as “suspect” by the United States, let alone identifications of Fariz, “other participants” in telephone calls, or “others mentioned” during telephone calls. Thus, Fariz’s assertions are mere speculation that cannot themselves support disclosure. United States v. Cole, 755 F.2d 748, 759 (11th Cir. 1985) (“unsubstantiated allegations of grand jury manipulation” do not satisfy particularized need standard); United States v. Lovecchio, 561 F. Supp. 221, 232 (M.D. Pa. 1983) (denying motion for disclosure and explaining that “[d]efendant contends that there may be grounds for a motion to dismiss the indictment but that the only way he can tell is to inspect the grand jury minutes. Yet in order to inspect the minutes, defendant must show a particularized need therefor” (emphasis added)).

Indeed, Fariz already has tapes of the telephone conversations that he suggests may have been misinterpreted for the grand jury. His possession of the very conversations he claims to suspect should negate any claim of “particularized need” for grand jury transcripts reiterating those conversations. See Lucas v. Turner, 725 F.2d 1095, 1101 (7th Cir. 1984) (finding no particularized need when, among other things, the parties had “failed to demonstrate . . . that the information contained [in the grand jury materials] could not have been obtained through normal discovery channels.”); cf. United States v. Sells Engineering, Inc., 463 U.S. 418, 431 (1983) (rejecting argument that savings in time may justify grand jury disclosure to civil government attorney as: “In most cases, the same evidence that could be obtained from the grand jury will be

available through ordinary discovery or other routine avenues of investigation.”).

Moreover, Fariz’s failure to use the tapes to support his speculation that other telephone conversations might have been misinterpreted suggests that Fariz holds no real suspicions regarding the grand jury’s interpretation of those other conversations as he should recognize his own voice and to whom he was speaking.

Fariz’s request for the grand jury transcripts, therefore, appears to be merely a “fishing expedition.” Indeed, he admits that he wishes to peruse the transcripts to determine whether “other counts and overt acts attributed to him, either directly or through conspiracy theories, are factually accurate,” Doc. 254 at 6, suggesting that he is searching not so much for information on the integrity of the grand jury, but for information regarding the charges against him so that he might better prepare for trial. Such a desire to use grand jury materials for general discovery purposes is not a “particularized need” and is wholly inadequate to overcome Rule 6(e)’s prohibition on disclosure. United Kingdom v. United States, 238 F.3d 1312, 1321 (11th Cir. 2001) (upholding order from S.D. Fla. denying motion to disclose grand jury materials and citing United States v. Rockwell Int’l Corp., 173 F.3d 757, 760 (10th Cir. 1999) (“No grand jury testimony is to be released for the purpose of a fishing expedition or to satisfy an unsupported hope of revelation of useful information.”)); Grand Jury Proceedings, Special September, 1986, 942 F.2d 1195, 1195-96 & 1198-99 (7th Cir. 1991) (reversing district court order granting disclosure as abuse of discretion because movant had failed to show “particularized need” when he appeared simply to be “fishing for testimony that possibly might produce evidence beneficial to” him in another proceeding).

Because Fariz has shown no legitimate need for grand jury materials, it follows that he has shown no need that might outweigh the continued need for grand jury secrecy under the second prong of the Douglas Oil standard. Even if Fariz had articulated a real need for the transcripts, however, he would still fail that prong. The Supreme Court has articulated five main reasons to protect grand jury secrecy. Douglas Oil, 441 U.S. at 219 n.10. Fariz suggests that several of those reasons no longer exist because the grand jury that returned his indictment may no longer be empaneled. Doc. 254 at 7. This case, however, has not proceeded to trial. Thus, another grand jury may return a second or superceding indictment that covers much of the same ground as the original indictment. United States v. Del Vecchio, 707 F.2d 1214, 1216 (11th Cir. 1983). All the reasons for preserving grand jury secrecy, therefore, should still hold force as if the case were still before the original grand jury.

Fariz suggests that this Court could peruse the transcripts in camera to “redact[] them as needed.” Doc. 254 at 7. It is unclear, however, how the Court would go about exercising its judgment to protect the need for secrecy absent a plethora of information about the witnesses before the grand jury, their likelihood of testifying, etc. Fariz also suggests that the Court impose restrictions on the dissemination of the grand jury information under Fed. R. Crim. P. 6(e)(3)(E) to protect secrecy. Doc. 254 at 7-8 (citing Rule’s authority for court to disclose grand jury material “at a time, in a manner, and subject to any other conditions that it directs”). Such restrictions, however, are appropriate after the Court has decided to disclose grand jury information; they cannot serve as an excuse to abrogate secrecy in the absence of a particularized need. As explained, Fariz has established no need to lift grand jury secrecy in the first place.

Finally, if Fariz had shown a need for the grand jury transcripts that outweighed the need for secrecy, his request is still not structured to allow the Court to lift secrecy “discretely and limitedly” under the third prong of the Douglas Oil standard. Despite Fariz’s claim that his request is “narrowly tailored,” he does not limit his request to any of the grand jury transcripts. Instead, he maintains that he should receive any and all materials that “pertain to him.” As he himself points out, Doc. 254 at 5, Fariz has been charged with conspiracy as well as substantive crimes. Moreover, according to the grand jury’s allegations, that conspiracy effectively overarches and encompasses virtually all of the substantive crimes alleged in the indictment. Thus, Fariz apparently seeks all the grand jury transcripts without limit. His request is too open-ended to support disclosure. Procter & Gamble, 356 U.S. at 683 (condemning the “wholesale discovery and production of a grand jury transcript” unconnected to any demonstrated need for testimony). Fariz’s suggestion that this Court peruse the transcripts to glean those related to his case does not help.

CONCLUSION

For the foregoing reasons, the Court should deny Fariz's motion for disclosure of grand jury transcripts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by facsimile and U.S. mail this 6th day of October, 2003, to the following:

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A

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA
3 TAMPA DIVISION

4 UNITED STATES OF AMERICA,) Case No. 03-CR-77-T-30-TBM
5)
6 Plaintiff,)
7) April 8, 2003
8 vs.) 2:00 p.m.
9) Tampa, Florida
10 HATIM NAJI FARIZ, ET AL,)
11)
12 Defendant.)
13)

14
15 TRANSCRIPT OF STATUS PROCEEDINGS
16 BEFORE THE HONORABLE MARK A. PIZZO
17 UNITED STATES MAGISTRATE JUDGE

18 APPEARANCES:

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*****Proceedings recorded mechanically, stenographically,
computer-assisted transcription.

1 (Call to Order of Court)
 2 THE COURT: Good afternoon.
 3 MR. HORROX: Afternoon, Your Honor.
 4 THE COURT: We have what I'll call a status
 5 hearing in the case of United States versus Hatim Naji
 6 Fariz. This is case number 03-CR-77-T-30-TBM. Will counsel
 7 please announce their appearances.
 8 MR. FURR: Walter Furr and Terry Zitek for the
 9 government.
 10 MR. HORROX: Good afternoon, Your Honor. Don
 11 Horrox on behalf of Mr. Fariz.
 12 THE COURT: And let me add that this concerns the
 13 filing by the government yesterday afternoon entitled
 14 Government's Supplement to the Record, which refers to one
 15 specific piece of information. Well, more than one, but
 16 I'll read it as it stands.
 17 On April 7, 2003 at 12:30 p.m., the government was
 18 informed that the individual Hatim Naji Fariz spoke with,
 19 and the conversation described at overt act 253 in Count 1
 20 is a PIJ, P-I-J activist, other than Abd Al Aziz Awda, who
 21 is a defendant in this case. Accordingly, references to Abd
 22 Al Aziz Awda in overt acts 236, 240 and 247 in Count 1 are
 23 suspect.
 24 All defendants, of course, are in custody at
 25 Coleman, and that is at least more than an hour's drive. I

1 and 236. Excuse me, overt acts 253 and 236 when I was
 2 discussing Mr. Fariz. I discussed the content of those
 3 conversations that are contained in those two overt acts and
 4 attributed the other speaker in those two overt acts as,
 5 besides Mr. Fariz, as being Abd Al Aziz Awda, which you
 6 noted is a co-defendant in the case. I think I also said
 7 that he was a designated terrorist at the time. I think
 8 that's how I described him, if my memory's right.
 9 THE COURT: Mr. Awda.
 10 MR. FURR: That's correct. Judge, yesterday as
 11 the motion states, or as the notice to the Court, the
 12 supplementary notice states, we received information that as
 13 to paragraph 253, the individual that Mr. Hatim Naji Fariz
 14 was speaking with is a PIJ activist other than Mr. Awda. We
 15 have received no information to indicate that the subject
 16 matter or the discussions that are contained in 253 aren't
 17 all inaccurate. It was simply the person that was
 18 discussed, that he had the conversation with. So, to the
 19 extent in my proffer that I said the conversation in 253,
 20 and I think by implication 236, was Abd Al Aziz Awda, we are
 21 going to pull away from that and just say that it was a
 22 person other than Abd Al Aziz Awda who's associated with a
 23 PIJ. I can say that as to 2353. I impliedly say it as to
 24 236, and I think that raises some question as to the other
 25 two paragraphs that we indicate that they are discussing

1 considered possibly reopening the detention hearing, but
 2 would be unable to do that and have the defendants here
 3 until at least Monday, according to the marshals. So, I
 4 convened this status hearing simply to get some explanation
 5 for the government as to what they mean, and so that
 6 Mr. Horrox knows, since this concerns Mr. Horrox's client,
 7 and then I'll make some decision whether it's necessary or
 8 not to reopen the detention hearing.
 9 And so that the record is also clear, my staff has
 10 contacted counsel for all the other -- the defendants as a
 11 courtesy to them that they were invited to attend and would
 12 make available their presence by phone. All have matters
 13 scheduled, or at least I know that Mr. Ballut's counsel and
 14 Mr. Hammoudeh's counsel has other hearings that they are
 15 attending. I do not know with respect to Mr. Matassini who
 16 continues to represent Mr. Al-Arian for bail purposes.
 17 Well, who wishes to speak on behalf of the
 18 government to explain in somewhat more detail their
 19 pronouncement?
 20 MR. FURR: Judge, at the detention hearing the
 21 government proceeded by way of proffer, and while I don't
 22 have a transcript of what I said in front of me, I have some
 23 memory of it, and I have the benefit of Mr. Zitek's notes as
 24 to what I was saying, and they are consistent with what I
 25 believe I said, and that was that I mentioned paragraphs 253

1 conversations and then discuss an individual that we
 2 describe Abd Al Aziz Awda. They are still talking PIJ
 3 business.
 4 THE COURT: I understand that. This brings up a
 5 couple of questions that I have, and one is -- maybe more
 6 than a couple of questions. What one is, Mr. Awda is a
 7 speaker in other overt acts in the Indictment. Is the
 8 government contending that in those other overt acts there
 9 is an authentication issue? I'm not talking about other
 10 overt acts in which he is, for example, in the early overt
 11 acts where he is a speaker --
 12 MR. FURR: Where there's a videotape.
 13 THE COURT: -- and a videotape. I'm talking about
 14 only the intercepts.
 15 MR. FURR: No sir. The four that are listed are
 16 the only ones that we believe are at issue. And 253 is the
 17 only overt act that we can say we have great doubt that that
 18 was Abd Al Aziz Awda.
 19 THE COURT: The second question that brings to
 20 mind is that overt acts 240 and 247.
 21 MR. FURR: All right.
 22 THE COURT: With me?
 23 MR. FURR: Uh-hum. Yes sir.
 24 THE COURT: More so 247 than 240, but certainly
 25 240 also. Mr. Fariz is discussing with Mr. Ballut

1 conversations that he has had with Mr. Awda.
 2 MR. FURR: Among other things.
 3 THE COURT: Among other things.
 4 MR. FURR: Yes sir.
 5 THE COURT: How did the government determine that
 6 Mr. Awda was the subject of Mr. Fariz' conversation?
 7 MR. FURR: In 240 and 247?
 8 THE COURT: Sure. And the reason I ask that
 9 question, the way it's suggested in the overt acts is that
 10 Mr. Fariz used either Mr. Awda's name or some terminology
 11 that everyone knew -- put it this way, all those privy to
 12 the conversation that the speakers knew about, not the
 13 surveilling agents.
 14 MR. FURR: Judge, he uses a nickname. He used his
 15 nickname for both of those.
 16 THE COURT: And that nickname was what?
 17 MR. FURR: It's Abu Ahmed or Fadl Abu Ahmed, which
 18 is what the a/k/a is for Mr. Awda.
 19 THE COURT: What has led to you to question the
 20 identification of Mr. Awda in overt act number 253?
 21 MR. FURR: Excuse me just a minute.
 22 THE COURT: Because I have to tell you I view, at
 23 least in my calculus for determining the weight of the
 24 evidence against Mr. Fariz, and I've given this, as you can
 25 tell from the time that has elapsed from the date of the

1 THE COURT: Well, my understanding from all the
 2 proceedings that have occurred before me and before Judge
 3 McCoun, because I've been speaking to Judge McCoun about the
 4 discovery status, is that all the information obtained from
 5 intercepts up to the date of the Indictment have been
 6 declassified. Am I jumping to conclusions?
 7 MR. FURR: Well, we all did. We all did. But
 8 that's not the problem here. We are trying to get
 9 everything that is on those -- the 8,000 plus hours,
 10 whatever it is, declassified. The matters that were -- the
 11 conversations that were intercepted that are within the
 12 Indictment are all declassified. The -- but the
 13 information, like I said, that we gained yesterday is not
 14 from that.
 15 THE COURT: So, if I were to ask you to produce a
 16 transcript of the overt acts -- excuse me. If I were to ask
 17 you to produce a transcript of the intercepts and overt acts
 18 253, 236, 240 and 247, you would not be able to do that?
 19 MR. FURR: No. I might have those. The
 20 conversations have been declassified. They have surely been
 21 at least summarized. If I could check with my case agent, I
 22 could tell you whether I actually have those. Judge, I have
 23 reason to think that we can -- those can be taken care of
 24 hopefully fairly quickly if the Court wants to see them.
 25 There is a process that the FBI goes through regarding these

1 bail hearing, the detention hearing to now, while I have not
 2 been able to devote a hundred percent of my time given all
 3 my other duties, given it a considerable amount of thought.
 4 And I have viewed overt acts 236 and 253 as fairly damaging
 5 overt acts as to Mr. Fariz, for as much as what they say as
 6 also as much as what they imply.
 7 MR. FURR: Judge, the -- in 253 you have a
 8 conversation that involves Mr. Fariz, and as it's alleged,
 9 Abd Al Aziz Awda. It's a conversation that involves Abd Al
 10 Aziz Awda discussing PIJ business. All we're saying is it's
 11 somebody else besides Abd Al Aziz Awda discussing PIJ
 12 business.
 13 THE COURT: Well, who is it, then?
 14 MR. FURR: Judge, I can't tell you. The
 15 information at this point is classified. We were just given
 16 it yesterday at the time I told you. We're trying to get it
 17 unclassified so we can use it, but that has not been done
 18 yet.
 19 THE COURT: How long will that take?
 20 MR. FURR: I don't know. The problem with the
 21 classified information is it's information I generally
 22 cannot get my hands on somebody that can immediately do
 23 something with it. It's a much more labored process than
 24 that, as you might imagine. And like I said, this just came
 25 in yesterday.

1 transcripts off of FISA calls in which they have to
 2 physically go through the transcript and redact information,
 3 I would suggest probably investigation numbers and that sort
 4 of thing.
 5 THE COURT: Okay.
 6 MR. FURR: That has not been done --
 7 THE COURT: If you're going to be redacting
 8 subject matter of the conversation, it's --
 9 MR. FURR: No. No. Headers or footers, if you
 10 will, just to guide paper flow within the FBI. That's
 11 what --
 12 THE COURT: I understand that.
 13 MR. FURR: Is that fair? That's what I'm led to
 14 understand. That has not been done as to those. If the
 15 Court wants them, we can do that. I don't think there's
 16 anything within, substantively within any conversation in
 17 the Indictment that is of a classified nature.
 18 THE COURT: The only thing that's classified that
 19 you're telling me about now is the information that you
 20 obtained on --
 21 MR. FURR: Yesterday.
 22 THE COURT: -- April 7th at 12:30.
 23 MR. FURR: Yes sir. It's not the same.
 24 THE COURT: Mr. Furr, that brings up a lot of
 25 questions as to why it would be classified, frankly.

1 MR. FURR: Well, if I could tell you, it would
2 alleviate the question, and that's the problem. I can't --
3 you want to know and I can't tell you. And you might gather
4 it's not my desire to not tell you. I would like to be able
5 to and just end this, but --

6 THE COURT: Well, I frankly am at a loss as to how
7 to treat 253, 236, 240 and 247, frankly. If you are
8 withdrawing that -- the proffer that Mr. Awda was a speaker
9 in 253, I don't know what you mean by saying that 236, 240
10 and 247 are suspect. And it seems to me that what you're
11 really asking me to do is to withdraw all those.

12 MR. FURR: No sir. What --

13 THE COURT: Withdraw all those in the sense that
14 any reference to Mr. Awda is not accurate.

15 MR. FURR: Based on the information we received,
16 it appears that 253 is with a PIJ activist other than
17 Mr. Awda.

18 THE COURT: And you're unwilling to tell me who
19 this PIJ activist --

20 MR. FURR: I can't tell you. Unwilling is not the
21 proper word.

22 THE COURT: I cannot evaluate whether this
23 individual is an unindicted co-conspirator or someone who
24 promotes the PIJ in a political sense to the extent that
25 that can be squared away with the First Amendment as opposed

1 MR. FURR: As the speaker on that call. That's
2 correct. That's correct.

3 THE COURT: Which makes me wonder as to the other
4 authentications of Mr. Awda in other conversations, which
5 there are few.

6 MR. FURR: Well --

7 THE COURT: Whether there are authentication
8 issues as to those.

9 MR. FURR: I am not aware of any that are even
10 arguable at this point beyond simply saying because there's
11 one problem there could be others. I mean, we -- I think we
12 have --

13 THE COURT: Which brings me to the question as to
14 how you ascertained -- what's the difference? That's the
15 question. What's the difference between your authentication
16 process in 253 as opposed to anywhere else in the Indictment
17 where Mr. Awda is a speaker? Because as has been
18 represented to me, you have said that your Arabic speakers
19 became familiar with many of the voices --

20 MR. FURR: That's correct.

21 THE COURT: -- at ICP conferences, those videos,
22 and that as a consequence have carried that through --

23 MR. FURR: That's correct.

24 THE COURT: -- throughout all of the intercepts.
25 Now, towards the end of conspiratorial period, this is

1 to actively supporting and maybe committing some potential
2 violation of the law.

3 MR. FURR: Well, and I don't want to get into --
4 obviously, I don't want to use this. I'm just trying to
5 answer the Court's questions, and I don't want to sit up
6 here and argue anything about this. Recall that the -- you
7 cannot give money to the PIJ.

8 THE COURT: I understand that.

9 MR. FURR: And that's what 253 is essentially
10 about. It's a money call, if you will. Because of that, we
11 felt that, 236, 240 and 247, as far as those conversations
12 being either with or referencing a person Abd Al Aziz Awda
13 was at issue because of it. And that's why --

14 THE COURT: So, his reference; that is, Mr. Fariz'
15 reference to Abu Ahmed, or any of the other aliases could be
16 somebody else?

17 MR. FURR: Well, we think it's the same person
18 he's talking to on 253, or talking about on 253.

19 THE COURT: Yeah, but in 253 Awda is a speaker.

20 MR. FURR: Yes sir.

21 THE COURT: I mean, what you're telling me is you
22 have obtained information which obviously goes to the
23 authentication Mr. Awda as a -- as somebody who is
24 conversing on the telephone with Mr. Fariz on November 10th,
25 2002.

1 November 10th, 2002, the last overt act is December 9, 2002.
2 Really, there's only two other intercepts after this
3 November 10, 2002 overt act. You're telling me that
4 Mr. Awda is not the speaker.

5 MR. FURR: That appears to be the case.

6 THE COURT: So, why shouldn't I question all the
7 other authentications that occurred before then as a matter
8 of logic? The car is blue. I have a car. The way it goes
9 is, if all cars are blue and I have a car, my car is blue.

10 MR. FURR: Judge, many of the Hatim Naji Fariz
11 FISAs' operated, if you will, out of another office. They
12 are not operated out of Tampa.

13 THE COURT: You mean as far as the surveillance is
14 concerned?

15 MR. FURR: As far as -- way the FISAs work is they
16 are obtained, as you're aware, through the FISA court and
17 with OIPR and the Department of Justice. The U. S. Attorney
18 Offices are not involved with them, and they work with a
19 particular portion of the FBI. I mean, J. Carter squad is
20 the one that works them here. All right. Hatim Naji FISAs
21 were by and large worked in Chicago. They were not worked
22 here.

23 THE COURT: I have a suggestion to you, Mr. Furr.

24 MR. FURR: Sure.

25 THE COURT: Based on my past experience about

1 intercepts, which is not a very good one. If you have any
2 question about anything verify, verify, verify. And I know
3 you well enough and Mr. Zitek well enough that I have great
4 respect for your abilities, as I do for Mr. Horrox's
5 abilities. All the lawyers in case are excellent lawyers.
6 But these are the kind of thorny issues where particularly
7 lawyers are having to rely on agents they may not know as
8 well as the case agents. It becomes difficult.

9 MR. FURR: Sure.

10 THE COURT: I mean, if we're having difficulty --
11 our intelligence community is having difficulty in
12 determining whether Saddam Hussein is on a videotape or
13 whether it's a double or whether the voice is his voice,
14 authentication issues can be extremely thorny. And I
15 understand from looking at this indictment as many times as
16 I have looked at it, the Awda conversations are fairly
17 limited. But as to Mr. Fariz, rightly or wrongly I've
18 attached some significance to those conversations. And I
19 don't know how to -- you are, in effect, asking me to simply
20 substitute a PIJ activist for Mr. Awda and give it the same
21 weight and consideration.

22 MR. FURR: Judge, I'm not asking you to give it
23 any particular weight and consideration. I am asking you to
24 substitute where we said Awda on 253 for a PIJ activist, who
25 is not Mr. Awda. The conversations occurred -- that's --

1 than some PIJ associate or wannabe.

2 MR. FURR: I understand.

3 THE COURT: And if he's not talking to Mr. Awda
4 and he's talking to a PIJ wannabe, then it's a lot
5 different, in my estimation, in assessing dangerousness to
6 the community.

7 MR. FURR: Judge, all I can say is it doesn't
8 appear to be Mr. Awda.

9 THE COURT: Well, let me ask Mr. Horrox, if I
10 wanted to have this hearing, Mr. Horrox, as quickly as
11 possible, even though I understood that your client would
12 not be here, so that's why I have called it a status
13 hearing, do you have any position on anything that you've
14 heard? And if so, I'll be glad to hear you.

15 MR. HORROX: Thank you, Your Honor. Yes, I
16 obviously do.

17 THE COURT: I know that you are looking through a
18 keyhole into a dark room, and I'm almost right next to you.

19 MR. HORROX: I think we're in the same posture,
20 Your Honor. But you're correct. Obviously I do have an
21 opinion, Judge. First of all, I don't believe I'm in a
22 position to waive Mr. Fariz' appearance for any proceedings
23 that we have in connection with this issue beyond today. I
24 would note for the record that another bone of contention
25 that has been bantered about this week has been the location

1 THE COURT: I understand.

2 MR. FURR: -- that's not the issue. By the way,
3 these are foreign language conversations. I mean, there is
4 a reliance here, but the conversations occurred. That's not
5 the issue -- that was not our issue we wanted to bring this
6 to the Court. We just learned that 253 is someone other
7 than Awda, and because the detention issue was out there, we
8 thought this was something we needed to get to you right
9 away, and that's the reason we --

10 THE COURT: I understand. And I appreciate the
11 government's candor. And I want you to be sensitive to the
12 issue that I have. And the detention issue as to Mr. Fariz
13 is a difficult one. It's not cut and dry as to Mr. Fariz.

14 MR. FURR: Judge, I would concur, with what was
15 just whispered to me by Mr. Zitek. Judge, I concede, we
16 concede as to 253 to the extent it is not Abd Al Aziz Awda,
17 the conversation may or may not be worth as much or as
18 important or as powerful as it might otherwise be.

19 THE COURT: Let me explain to you why I think, and
20 Mr. Horrox can comment, why I think the conversations
21 between Mr. Fariz and Mr. Awda, as well as Mr. Shallah are
22 important. To me, those conversations signify the value
23 that Shura council members other than as alleged. Mr.
24 Al-Arian gave to Mr. Fariz, and that Mr. Fariz had access to
25 these individuals, and this signifies to me more importance

1 of all the defendants at Coleman. I would ask the record
2 note that if they had been closer, then, it might have been
3 possible to bring them here today. I know that's not the
4 Court's doing, but I see that as being another issue very
5 soon to arrive on the horizon.

6 THE COURT: I'm not sure that's the case, but I
7 understand your position.

8 MR. HORROX: Judge, in short my position would be,
9 in view of what we've heard here today, that the Court
10 should not take into consideration any of the allegations in
11 those paragraphs. My position would be that the Court
12 should simply discard the information in making its
13 determination as to the weight of the evidence in this case.
14 The government has to sleep in the bed that it made. And
15 they came in here. They relied solely upon the Indictment
16 in this case, which I argued in my argument to the Court
17 established more than probable cause found by a Grand Jury.
18 And now it turns out that some of the allegations in that
19 indictment were wrong. And when pressured by the Court or
20 pressed by the Court to offer an explanation, the government
21 can't do it because the items are classified. That does not
22 assist the Court in any way toward a determination as
23 whether the weight of the evidence against Mr. Fariz is
24 persuasive, if I may use a word that the Court used at the
25 hearing when I pointed out it was the finding of probable

1 cause. I think the Court had told me, well, Mr. Horrox, I
2 find the allegations to be persuasive.

3 And obviously, with all due respect to the Court,
4 to the extent that the Court may have found these
5 allegations to be persuasive, we're finding out today they
6 are not in the least bit persuasive. I think there are huge
7 issues in this case beyond the detention issues that have
8 been raised by the government's supplement to the record. I
9 think there's Brady issues here. I think there may be
10 issues as to the credibility of the testimony presented to
11 the Grand Jury which may allow the defense to file motions
12 to get transcripts of these proceedings. That's for another
13 day.

14 As to the detention issue, though, Your Honor, I
15 would submit that unless the government can tell the Court
16 who this other person was, who is in the government's
17 opinion not Mr. Awda, and how they can tell if this person
18 was another PIJ activist, as opposed to someone not
19 associated with the PIJ, then I think the Court is well
20 within its right to disregard the allegations in this
21 paragraph, or in these paragraphs because the government
22 doesn't allow the Court anything which would allow the Court
23 to find that these allegations are compelling or persuasive,
24 or whatever adjective we want to assign to them.

25 I think it severely compromises the strength and

1 the weight of the evidence against Mr. Fariz. I think the
2 reason for that is that Mr. Awda, as the Court has alluded
3 to just a few moments earlier, Mr. Awda is alleged in
4 paragraph 12 at the outset of the Indictment to be a founder
5 and spiritual leader of the PIJ and a member of the
6 governing Shura council. Now, if Mr. Fariz was not speaking
7 to him and was speaking to someone who was wholly innocent,
8 or in the best case for the government it would seem at this
9 point, someone who maybe had some knowledge or association
10 with the PIJ, then that severely compromises the strength of
11 the evidence and the weight of evidence against Mr. Fariz.
12 And I think there's -- it goes beyond that, Judge.

13 We can look at Count 35 in the Indictment, which
14 is a wire count, which alleges to be between Mr. Fariz and
15 Mr. Awda on May 26th, of 2002, and it specifically makes
16 reference to over act 236.

17 THE COURT: Excuse me, Mr. Horrox, which number
18 did you say?

19 MR. HORROX: This would be Count 35. It's a wire
20 count. It charges Mr. Fariz and Mr. Awda.

21 THE COURT: Could I ask you to pause for a moment?

22 MR. HORROX: Yes, Your Honor.

23 THE COURT: I have a note on my desk that I
24 omitted to bring. You were speaking about Count 35.

25 MR. HORROX: Yes, Your Honor. Count 35 is one of

1 these many wire counts, and it alleges as defendants
2 Mr. Awda and Mr. Fariz. And it says it's a telephone
3 conversation for the type of facility. And then it
4 incorporates by reference the allegation contained in overt
5 act 236, which is one of the paragraphs or overt acts which
6 the government in its supplement to the record has
7 characterized for the Court as being suspect. And
8 furthermore, which the government in the second paragraph of
9 that supplement indicates that they are withdrawing the
10 argument from that that was Mr. Fariz in contact with
11 Mr. Awda.

12 That being the case, Your Honor, it would seem to
13 me that it's going to be incumbent upon the government at
14 some point in time to dismiss that count against Mr. Fariz
15 and Awda. I don't know how the government can proceed with
16 respect to that count. So, that's one count that it seems
17 that the government is going to have to abandon against
18 Mr. Fariz.

19 Similarly, Count 43 is another wire count, which
20 alleges Mr. Awda and Mr. Fariz as being two of the
21 defendants, the only two defendants alleged. It's alleged
22 to be a telephone conversation, and it incorporates by
23 reference paragraph 253, which the government, as is stated
24 in its notice or supplement, that as Mr. Furr further
25 elaborated on today is probably the conversation of which

1 they are most convinced was not Mr. Awda as a participant.
2 That count, it would seem to me, the government at some
3 point is going to have to abandon as well.

4 So, there's two counts against Mr. Fariz, which I
5 don't believe are well-founded in the Indictment, yet a jury
6 found probable cause -- Grand Jury found probable cause to
7 indict both Mr. Awda and Mr. Fariz on those counts.

8 A third count, Count 41, alleges to be between Mr.
9 Ballut and Mr. Fariz, a telephone conversation which
10 incorporates by reference overt act 247. In that
11 conversation, Your Honor, Mr. Fariz and Mr. Ballut are
12 allegedly discussing Mr. Awda. And in the government's
13 supplement, which it filed with the Court, they characterize
14 that overt act as being suspect and are withdrawing the
15 argument that Mr. Fariz was in contact with Mr. Awda with
16 respect to, I suppose, that overt act as well. That's
17 another count that I don't think the government is going to
18 be able to proceed upon.

19 It also casts into doubt the integrity and
20 credibility of the allegations against Mr. Fariz with
21 respect to Count 3, which is the conspiracy to provide
22 material support. If you look at page 95 of the Indictment,
23 in wrapping up a description of the charge in the last
24 sentence, it says, Throughout 2002, Hatim Naji Fariz spoke
25 by telephone with Mr. Awda, who was overseas, about

1 transfers of funds to Mr. Awda to be used for PIJ. But what
2 we're finding out today is that the government doesn't
3 believe that Mr. Fariz was in touch with Mr. Awda, which
4 severely casts into doubt this count against Mr. Fariz.

5 And it seems to me, Judge, in reading the
6 government's indictment, a large part of what they allege,
7 that this case is about the alleged accumulation of funds
8 here in the states to send to the PIJ in the Middle East. A
9 large part of what the government has alleged against
10 Mr. Fariz in this Indictment is that Mr. Fariz, however the
11 money was accumulated here, he sent to none other than
12 Mr. Awda. And now we're hearing from the government, no, he
13 didn't have conversations with Mr. Awda. It was someone
14 else. It casts a real wedge, it seems to me, into the
15 allegations of not only those wire counts but also Count 3,
16 and even Count 4, which is a conspiracy to make and receive
17 contributions of funds, goods or services to or for the
18 benefit of specially designated terrorists, and that count
19 alleges that Mr. Awda was a specially designated terrorist.
20 And it incorporates by reference paragraphs 122 to 255 of
21 the Indictment, which includes these paragraphs. And now
22 the government is saying, no, Mr. Fariz wasn't speaking to
23 Mr. Awda. So, what does that mean with respect to Count 4?

24 Judge, I respectfully submit to the Court that the
25 allegations against Mr. Fariz are severely in question in

1 THE COURT: I'm not prepared to -- I mean, I will
2 evaluate the overt acts as to Mr. Fariz and the proffer as
3 to Mr. Fariz and make a determination whether leaving aside
4 these overt acts he presents a flight risk and a danger to
5 the community. But what I am telling you is, is that based
6 upon your proffer this morning, as corrected, and taking
7 account the proffer you made previously at the detention
8 hearing, the government's case against Mr. Fariz is not as
9 convincing as it was or persuasive as it was previously.
10 Because the tenor of the conversations is now much more
11 open.

12 MR. FURR: Judge, all I can -- my only response
13 that I can make regarding the fact that it's no longer
14 Mr. Awda on 253 as to the -- as to the -- as vigorous as we
15 tell you it's not Mr. Awda, we say with the same vigor it's
16 another PIJ activist. That's all I can say.

17 THE COURT: Well --

18 MR. FURR: That's really all I can -- and I
19 understand that Awda is a heavyweight. I understand that.
20 I understand that. And I understand the Court, if you want
21 to you can legitimately say that's more important, you know,
22 if I know he's talking to someone, if you will, has a rank
23 in the organization. I understand that. But that's all I
24 can say at this point.

25 THE COURT: Okay.

1 this case. And to the extent that the Court feels that the
2 weight of the evidence against Mr. Fariz is a factor in
3 deciding whether to detain him or not, I would respectfully
4 submit that it's become a non factor, because the integrity
5 and the credibility of the government's investigation
6 against Mr. Fariz is severely in question. And that being
7 the case, I urge the Court to set a bond for Mr. Fariz in
8 this case.

9 MR. FURR: Just the briefest of responses. The
10 telephone counts which are -- that he discussed, which are
11 Counts 35, 37, 41 and 43 are not dependent on whether the
12 person that was either being talked to, as in two of them
13 was Abd Al Aziz Awda, or whether they were talking about Abd
14 Al Aziz Awda. If you look a couple of those conversations
15 Abd Al Aziz Awda was an afterthought in them.

16 THE COURT: I think the difficulty, though, that
17 I'm having, Mr. Furr, is accepting the principle that the
18 government wants me to accept. That any discussion about
19 money is necessarily PIJ money as opposed to money that goes
20 to innocent causes or non prohibited causes. And without
21 knowing who this individual, this PIJ activist is, I don't
22 have a great deal of confidence in being able to say that
23 those conversations that the government now views as suspect
24 as to the speaker, Mr. Awda, deals solely with PIJ business.

25 MR. FURR: Judge, all I can respond to that --

1 Well, I'm going to take the record as it's been
2 presented to me and make some determination as to whether
3 Mr. Fariz is a flight risk or a threat to the community.
4 And I can tell you Mr. Horrox, that if I make a
5 determination that I think he certainly might be, I will
6 reopen the detention hearing for the purpose of having your
7 client be able to hear the proffer of the government as to
8 these items we discussed today and any information that the
9 government has to present, and as well hear any counter
10 arguments that you have.

11 MR. HORROX: Yes, Your Honor.

12 THE COURT: And I will do that as quickly as I
13 can, evaluate what the government has told me and what
14 you've told me.

15 MR. HORROX: Judge, if I can just have very brief
16 response to Mr. Furr's last comments. The government urges
17 the Court to find that even though they are convinced, I
18 guess at this point, that Mr. Fariz was not speaking to
19 Mr. Awda in that telephone conversation, that they were just
20 as sure that it was another PIJ activist. They offer
21 nothing to the Court in the way of evidence at all to assist
22 the Court in making that determination.

23 THE COURT: I Noticed that, Mr. Horrox. And I'm
24 sure Mr. Furr and Mr. Zitek realize that as well. And let
25 me look through my notes and see if I had any more

1 questions.

2 Not to put words in your mouth, Mr. Furr, but I
3 want to make sure before I leave the bench that I have as
4 full an understanding as I can as to what the government's
5 position is. And that is that in 253 the government is now
6 of the position that the speaker, one of the speakers was
7 not Mr. Awda, correct?

8 MR. FURR: That is correct.

9 THE COURT: That in 236 an intercept which
10 preceded the November 10, 2002 overt act 253 intercept by
11 approximately four months, this occurring on May 26, 2002,
12 that the government is unsure whether the speaker was
13 Mr. Awda?

14 MR. FURR: That's because of 253.

15 THE COURT: Am I to understand whoever confirmed
16 that 253 was not Mr. Awda, has not had a chance to review
17 236 yet?

18 MR. FURR: Judge, I think that the person or party
19 that said 253 does not appear to be Mr. Awda has caused us,
20 and think also has concerns about whether by implication 236
21 is Mr. Awda as well.

22 THE COURT: Okay.

23 And 240 and 247 are suspect because they reference
24 conversations about Mr. Awda?

25 MR. FURR: That's correct. That's correct. To

1 the extent they appear -- again, I'm not trying to argue.
2 If you look at 240, you'll see it was a long range of
3 conversation --

4 THE COURT: Right. I understand.

5 MR. FURR: -- at the very end deals somewhat with
6 Abd Al Aziz Awda.

7 THE COURT: The only suspect portion is any
8 conversations recapitulating what Mr. Fariz may have talked
9 to Mr. Awda about in 253?

10 MR. FURR: That's correct.

11 THE COURT: Okay. Anybody have anything to add
12 before we close?

13 MR. FURR: No sir.

14 MR. HORROX: No, Your Honor.

15 THE COURT: All right. Thank you.

16
17 (Thereupon, the proceedings were concluded.)
18

19 *****

20 CERTIFICATE

21 I hereby certify that the foregoing is an accurate
22 transcription of proceedings in the above-entitled matter.
23
24

25 _____
Official Court Reporter

Date